IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.12866 of 1998

Between:
K.Dasarath

..... PETITIONER

AND
Govt. of Andhra Pradesh, rep. By its Principal Secretary, Labour Employment & Factories (Lab-I) Department, Secretariat Buildings, Hyderabad and another

.....RESPONDENTS

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.12866 of 1998

ORDER:

Heard the learned counsel on either side.

The petitioner while working as a Conductor in the Andhra Pradesh State Road Transportation Corporation (APSRTC) had been subjected to disciplinary proceedings by issuance of charge sheet on 15.07.1987, alleging certain irregularities committed by the petitioner.

The first charge laid against the petitioner is that the service conducted by the petitioner on a city route arrived five minutes ahead of its scheduled time of arrival of 21.05 hours on 20.06.1987. One wonders where this could amount to misconduct at all, for, there could be any number of reasons attributable for the arrival of a city bus ahead of its time schedule. It may not happen on many occasions. If the traffic on the roads is clear or commuters are far and few in between, could be factors for a city bus to have reached its destination five minutes ahead, so long as it is not alleged that the bus was not conducted on the approved route and that it has not stopped at its approved halts, the seriousness of the charge is certainly a debatable issue.

The second charge relates to an allegation of abuse and misbehaviour of the petitioner with Ticket Checking Officials of the APSRTC. The third charge relates to instigation of the passengers by

the petitioner to abuse and assault the traffic inspector. The 4th charge relates to refusal to acknowledge the remarks written by the Traffic Inspector against the petitioner.

Pursuant to these allegations, the petitioner has been imposed a punishment of stoppage of three increments with cumulative effect. Various steps and measures taken by the petitioner for securing redressal of his grievance within the organization itself have failed. Therefore, he solicited conciliation to be carried out by the Labour Enforcement Department by submitting his representation in this regard on 15.03.1997. Entertaining the same, proceedings seem to have been set in motion to conciliate between the parties. But, however, by an order passed on 15.01.1998, the Government of Andhra Pradesh has rejected the request to refer the dispute for adjudication by the Labour Court. The only reason assigned for refusing to refer the dispute for adjudication is that it is a belated case raised with 8 years of delay.

Smt.E.Urmila, learned counsel for the petitioner, placing reliance on a judgment rendered by the Supreme Court in ***Ajaib Singh v. Sirhind Coop.Marketing-cum-Processing Service Society Ltd.***[1] contends that there is no period of limitation prescribed, as it is, for the purpose of having the disputes between the employer and employee to be resolved, through the mechanism provided under the Industrial Disputes Act, and therefore, the rejection of the State Government to refer the dispute raised by the petitioner for adjudication by the concerned Labour Court is improper.

The learned standing counsel for the APSRTC would contend that stale and sterile matters are not required to be referred for adjudication. The petitioner by his conduct should be assumed to have

accepted the punishment imposed and subsequently he cannot turn round and raise a dispute or have the same adjudicated. The learned counsel would also contend that the delay would effectively deny a proper opportunity to put forth the defence and hence such claims should not be entertained at all.

Before proceeding any further, it is appropriate to notice what the Supreme Court has set out in ***Ajaib Singh v. Sirhind Coop.Marketing-cum-Processing Service Society Ltd.*** (1 supra) in paragraphs 5, 6 and 10 as under:

> "5. Before appreciating the rival contentions urged on behalf of the parties, it has to be noticed as to under what circumstances the Act was enacted and what were the objectives sought to be achieved by its legislation. It cannot be disputed that the Act was brought on the statute-book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour (*Hindustan Antibiotics Ltd. v. Workmen (AIR 1967 SC 948)*. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve cooperation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the Statement of Objects and Reasons. While interpreting different provisions of the Act, attempt should be

made to avoid industrial unrest, secure industrial peace and to provide machinery to secure the end. Conciliation is the most important and desirable way to secure that end. In dealing with industrial disputes, the Courts have always emphasized the doctrine of social justice, which is founded on the basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act.

6.……..The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of a welfare State implies an end to the exploitation of workmen and as a corollary to that collective bargaining came into its own. The legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of society which is a prerequisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be the lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of society keeping in view the fast-changing social norms of a developing country like India. It appears to us that the High Court has adopted a casual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act.

10. It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court of board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his

> illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages……"

The principle that emerges from the above judgment is that the adjudicatory process for securing resolution of an industrial dispute shall not be put off merely on the ground of delay in raising such a claim. The Industrial Tribunal/Labour Court will appropriately take into account and consideration the impact the delay would have on the opposite party and would appropriately regulate the ultimate relief which is liable to be awarded. It should be left to the adjudicatory body to consider the matter. Therefore, the apprehensions entertained by the learned standing counsel are perhaps not liable to be entertained at this stage. It is open to the management of APSRTC to demonstrate as to how the delay on the part of the petitioner in raising the dispute has caused prejudice to them in effectively resisting the claim. That is an issue, which the Labour Court certainly will consider while analyzing the proceedings before it. I, therefore, find no justification for the State Government to decline to refer the dispute for adjudication by the Labour Court, all the more when the conciliation efforts made by its Labour Enforcement Department had only failed to convince the management about redressing the grievance nurtured by the petitioner.

I, therefore, allow this writ petition, directing the State Government to refer the dispute, within a period of two months from the date of receipt of a copy of this order, for adjudication to the Labour Court having the jurisdiction to decide the lis. In the circumstances, there shall be no order as to costs.

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NOOTY RAMAMOHANA RAO,J

Dated:13.12.2007
Dsr

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[1] (1999) 6 Supreme Court Cases 82